IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 32 OF 2005

Mr. Alex Fernandes
S/o Anthony Fernandes,
Salcete, Goa, Native of
Geetanjali Bldg., 1st floor,
Grand Road & presently
undergoing sentence at
Sub-Jail, Sada, through
next friend Francisco
Savio Vaz. ... Appellant

versus

S T A T E ... Respondent

Mr. Arun Bras De Sa, Advocate for the Appellant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 23RD FEBRUARY, 2007.

ORAL JUDGMENT

This appeal is filed by the appellant Alex Fernandes/A-1 against Judgment dated 21-7-2005 by which he has been convicted and sentenced under Section 392, I.P.C.

2. The Juvenile Justice(Care and Protection of Children) Act, 2000 came into force w.e.f. 1-4-2001. Section 2(k) defines “juvenile” or “child” to mean a person who has not completed 18 years of age. As per the charge-sheet, the appellant/A-1 was born on 24-6-1983 and as such would have ceased to be a juvenille on 24-6-2001. The offence took place on 14-6-2001 at a time when the appellant/A-1 was a juvenile.

3. The Apex Court in **Pratap Singh** v. **State of Jharkhand and another**((2005) 3 SCC 551), by majority, has held that the date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the Court. The appellant/A-1 therefore had to be tried as a juvenile, being a person in conflict with law by the Juvenile Justice Board as established by Section 4 of the said Act. The appellant/A-1 could not have been tried by the Court of Sessions, as rightly contended on his behalf by learned Counsel. The trial and consequently the conviction and sentence imposed by the appellant/A-1 is without jurisdiction and therefore has got to be set aside.

4. Hence, the appeal is allowed. The conviction and sentence imposed upon the appellant/A-1 by the learned Additional Sessions Judge is hereby set aside. The prosecution is at liberty to file a separate charge-sheet/report against the appellant/A-1 before the Juvenile Justice Board as contemplated by the Juvenile Justice(Care and Protection of Children) Act, 2000. The learned Public Prosecutor undertakes to convey this order to the Investigating Officer as well as to the Officer in Charge of concerned Police

Station for doing needful in the matter.

Expedite authenticated copy of the order be given to the learned Public Prosecutor.

N. A. BRITTO, J.

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